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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/605,879

11/03/2003

James W. Wieder

W03-003

2878

30875

7590

06/26/2008

JAMES W. WIEDER

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EXAMINER

GREENE, DANIEL LAWSON

ART UNIT

PAPER NUMBER

3694

MAIL DATE

DELIVERY MODE

06/26/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/605,879	Applicant(s) WIEDER, JAMES W.	
	Examiner DANIEL L. GREENE	Art Unit 3694	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 June 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 101-110, 112-118, 121 and 141-162.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
 12. ☒ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). 20071030
 13. ☒ Other: See Continuation Sheet.

/Mary Cheung/
 Primary Examiner, Art Unit 3694

Continuation of 13. Other: Applicant's amendments to the claims and arguments in support thereof have been fully considered but they are not persuasive. Applicant's plethora of claim amendments presents the possibility of new matter as well as surpassing the cursory review granted after final amendments.

For applicant's benefit the Examiner will attempt to answer some of the contentions raised in applicants response.

First, regarding the 101 rejection, a human can quickly associate music material with its source of creation (i.e. artist) or genre. If a person has a specific dislike for a specific artist, that dislike may be enforced and made larger by reiteration of listening to that artist. It's like adding dislike to dislike until one reaches the point of loathing the artist. Granted the preference may be established before taking action, or it may be reinforced. Further, even applicants own invention keeps track of previous actions and therefor has preestablished preferences just as a human would. Regarding the limitations capturing and updating, the human brain does this "automatically" whether one wishes it to do so or not.

Second, it is the Examiners understanding that Conkwright still anticipates applicant's invention because, for example, the set top box is monitoring the individual users actions and causing programming to be altered via those actions. Therefore Conkwright anticipates not only geographic monitoring of preferences but individual preferences as well (since it is the individuals preferences being monitored). To be clear, the feedback of Conkwright is used in determining programming, accordingly it anticipates both long term and immediate changes in said programming. Again, Conkwright discloses monitoring preferences of the masses and therefore anticipates monitoring preferences of the individual.

A copy of the 10/30/2007 IDS is attached to the instant action.